IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 5.3.2007

Coram

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.[NPD] No.835/2003

1.A.Arthaneri
2.A.Srinivasan

..Petitioners[Respondents/ Respondents].

vs.

1.S.Seshagiri rao
2.S.Gnanasekaran
3.S.Sairam
4.Lakshmi
5.Dhanapal

.. Respondents[Petitioners 2 to 4 Respondent 5/Petitioners, Decree Holder]

Revision Petition filed under Section 115 CPC against the order dated 11.6.2003 made in R.E.A.No.38/2003 in R.E.P.No.107/1995 in O.S.No.178/1977 on the file of the District Munsif, Dharmapuri.

For Petitioners : Mr.P.Jagadesan
For Respondents 1 to 3 : Mr.T.R.Rajaraman
Respondent 4 and 5 : Given up.

ORDER

This Revision Petition has been filed against the order dated 11.6.2003 in R.E.A.No.38/2003 in R.E.P.No.107/1995 in O.S.No.178/1977 on the file of the District Munsif, Dharmapuri.

2.The obstructors in R.E.A No.38/2003 in R.E.P.No.107/1995 are the revision petitioners before this court. They are aggrieved by the order of the execution court dated 11.6.2003 by which the execution court permitted the decree holders to amend the execution petition by amending the survey number in the description of the property as Survey No.253/2B1-A2 instead of Survey No.253/2B1-B2 as inadvertently typed in the execution petition. The executing court allowed the same. Hence the revision petition by the obstructors for the aforesaid relief.

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3.Heard the learned counsel for the revision petitioners and the learned counsel for the respondents. I have also perused the documents filed and the judgments referred to by them in support of their submissions.

4.The learned counsel for the revision petitioners submitted that as per the decree of the first appellate court, the Survey Number of the suit schedule property is S.No.253/2B1-B2 and therefore the very same number was given in the execution petition also. In such circumstances, according to the learned counsel for the revision petitioners unless the Survey Number in the decree is amended, the Survey Number in the execution petition cannot be amended.

5.Per contra the learned counsel for the respondents submitted that a mere typographical error of this nature would have to be corrected and no prejudice would be caused to any parties as excepting the Survey Number, no other details need to be amended and the property is identifiable by all the parties. The learned counsel for the respondents relied on the decisions of this court reported in 1974 TNLJ 463 (Hamid Bi vs. Udayyan) and 1997(1) CTC 584 (Chinna Marudachalam v. Chinnaiya Gounder) in support of his contentions.

6.I have considered the rival submissions carefully with regard to facts and citations.

7.It is the case of the decree holders that the suit filed in O.S.No.178/1977 was dismissed by the trial court and the appeal filed by them in A.S.No.58/1979 was allowed by the 1st appellate court. The Second Appeal against the judgment of the first appeal was dismissed by the High court. In R.E.P.No.107/1995, delivery was ordered by the execution court but the delivery was obstructed by the obstructors. So proceedings were initiated for removal of obstructions and pending those proceedings, it was found that the Survey Number in the description of the property in the execution petition was inadvertently given as S.No.253/2B1-B2 instead of S.No.253/2B1/A2. The execution court after noting that as per trial court decree the suit property is described as S.No.253/2B1-A2 held that a mistake has been crept in in the appellate court decree wherein the suit property is described as S.No.253/2B1-B2 instead of 253/2B1-A2 and therefore allowed the petition, filed by the decree holders.

8.I am of the considered view that the trial court has committed an error in permitting the decree holder to amend the execution petition when the decree of the 1st appellate court is not at all amended. The case of the decree holders is that when the proceedings to remove the obstruction are pending they found that the Survey Number was wrongly given in the execution. This statement of the decree holders is not correct. In fact the Survey Numbers have been correctly given on the basis of the decree of the first appellate court dated 30.11.1979 in A.S.No.58/1979. The first appellate court also has not committed any mistake as the Survey Number

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given in the description of the property in the first appeal is S.No.253/B1-B2. Therefore a mistake has been committed by the decree holders in their first appeal at the time of filing the first appeal. No doubt it is true that in the plaint filed in O.S.No.178/1977, the Survey Number has been given as 253/2B1-A2. But the suit was dismissed and the appeal was allowed and it is the decree passed by the first appellate court which is sought to be executed by the decree holders. The Survey Number in the execution petition is to be in consonance with the Survey Number given in the decree of the first appellate court. In such circumstances, the learned counsel for the petitioner is right in contending that unless the decree of the appellate court is amended with regard to Survey Number, the decree holder cannot amend the Survey Number in the execution petition.

9.The learned counsel for the respondents submitted that under Sec.153 CPC, execution court can amend the execution petition as the Survey Number mentioned, is only a mistake and the property is easily identifiable.

10.In 1997(1) CTC 584 (cited supra) this court held that mistake committed by court which carries prejudice to party can be corrected by court in exercise of its inherent power even after judgments pronounced and signed.

11.This decision relied on by the learned counsel for the respondents is not helpful to him as in the case on hand the mistake has been committed by the decree holders themselves at the time of preparing the grounds of Memorandum of first appeal.

12.In 1974 TNLJ 463 (cited supra) this court held that once there is no dispute as to the identity of the land ascertained from the boundaries then the amendment sought for is to be allowed to amend the decree.

13.Even in the above decision, this court permitted the decree holder to amend the decree and not the execution petition as sought for by the decree holders in the case on hand.

14.Under Sec.153 of CPC, courts may at any time and on such terms as to costs amend any defect or error in any proceeding in a suit for the purpose of determining the real question or issue.

15.The power to amend is not disputed and the court can definitely amend if it thinks so. But as already discussed, in the case on hand, the decree holders cannot straight away amend the Survey Number in the schedule mentioned in the execution petition without first amending the decree which is sought to be executed.

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16.Hence the decree holders who are respondents 1 to 3 herein are given the liberty to approach the first appellate court which granted the decree in their favour to carry out the correction in the schedule by way of an amendment to enable the decree holders to present the pending execution petition. The decree holders/respondents 1 to 3 are directed to approach the first appellate court within two weeks from the date of receipt of this order and on such petition being filed by the decree holders, the first appellate court is directed to dispose of the same within 2 weeks on merits and in accordance with law.

17.With the above direction, this Civil Revision Petition is allowed. C.M.P.No.8792/2003 is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sks

To
The District Munsif,
Dharmapuri.

+ 1 CC To Mr. P.Jagadeesan, Advocate SR NO.13174.

+ 1 CC To Mr.T.R.Rajaraman, Advocate SR NO.13538

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